

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

v.

RODRIGO KEDE DE FREITAS LIMA,

Defendant.

20 Civ. 4573

**DECLARATION OF
RANDY WALKER**

RANDY WALKER declares pursuant to 28 U.S.C. § 1746:

1. I am the Global Managing Director, Financial Services at International Business Machines Corporation (“IBM” or “the Company”). I have worked for IBM since 1997 serving in a variety of senior management positions. I was appointed to my current position in January 2020. Prior to that, I was the Managing Director of IBM’s client relationship with AT&T, IBM’s largest customer account.

2. I make this declaration in support of IBM’s application for a temporary restraining order and a preliminary injunction to enjoin Rodrigo Kede de Freitas Lima from taking the position of Corporate Vice President, Latin America at Microsoft Corporation (“Microsoft”), one of IBM’s principal competitors, during his twelve-month non-competition period.

3. Until he resigned from IBM on May 18, 2020, Mr. Lima was among the top 1% of IBM’s highest ranking executives. Mr. Lima’s career at IBM spanned 25 years. From January 2020 until the time of his resignation, Mr. Lima served as General Manager, Integrated Accounts, where he was responsible for overseeing all

aspects of IBM's 77 largest, most valuable, and most strategic customer accounts across all IBM business lines and regions. I worked closely with Mr. Lima in this role, as my position as Managing Director, Financial Services involved engagement in many of IBM's Integrated Accounts. Since Mr. Lima announced his resignation, I have replaced him and served as the interim General Manager, Integrated Accounts.

4. Prior to his taking the Integrated Accounts role in January 2020, Mr. Lima was the leader of IBM's Global Technology Services ("GTS") business for all of North America throughout 2019. GTS, one of IBM's five main business segments, provides information technology ("IT") services for clients, including delivering IT infrastructure services (such as Cloud computing) and IT support services (such as maintenance and software support). I worked closely with Mr. Lima in this role as well during my tenure as Managing Director of the AT&T account, because AT&T is the largest customer for IBM's GTS business in North America.

5. In both of his recent roles, Mr. Lima was a "Band A" executive—meaning that he was among the highest ranking executives at IBM. He also was a member of IBM's Performance Team, an exclusive group of about sixty high-ranking executives, including the Chairman, CEO, and Senior Vice Presidents, who are responsible for the operational performance of the entire company.

6. From working with Mr. Lima over the past year in both of his recent roles, I am aware that Mr. Lima has first-hand knowledge of, among other things:

- IBM's launch plans and roadmap for new products and services in development, including a new suite of Cloud-computing offerings for customers in the financial services industry;

- IBM's competitive strategies in bids for business where IBM competes head-to-head against Microsoft to win customers, including in large business and government accounts;
- IBM's projected profits and revenues, pricing strategies, strengths and weaknesses, and key opportunities with respect to the Company's top 77 customer accounts across all business lines, as well as the key individuals at each client account involved in managing the business that client provides to IBM or its competitors;
- IBM's business, financial, growth, and investment plans for its global business over the next twelve months; and
- IBM's acquisition strategies, including IBM's plans to integrate and deploy capabilities of Red Hat, Inc., the Cloud-computing company IBM acquired in 2019.

7. In addition, Mr. Lima developed deep relationships with IBM's customers in Latin America all throughout his IBM career, cultivating goodwill using the resources of the Company. He continued to cultivate and leverage those relationships in his most recent roles in GTS and as the General Manager, Integrated Accounts, and he also was designated as the executive responsible for maintaining the primary relationship with several Latin America clients through IBM's "Partnership Executive Program."

8. As a result of his work for IBM, Mr. Lima possesses important customer goodwill and has substantial knowledge of IBM's top-level trade secrets and confidential information. This knowledge includes, in addition to the list above, information about IBM's global business strategy, products in development, and top client accounts. The trade secrets and confidential information of the type that Mr. Lima has knowledge of are highly confidential and, if disclosed to or used for the benefit of Microsoft, would cause harm to IBM in the competition with Microsoft, particularly in the Cloud computing sector. Furthermore, the goodwill and confidential information Mr.

Lima possesses concerning IBM customers, particularly in Latin America, would help Microsoft develop and execute its competitive strategy in the region against IBM.

9. According to Microsoft, Mr. Lima's job title will be Corporate Vice President – Latin America, responsible for setting the direction for the region's portfolio in alignment with global strategy and partnering with regional general management and other operational leaders.

10. Microsoft competes head-to-head against IBM for the same business and government customers. IBM's computer software and service offerings compete directly against Microsoft's in many areas of IT, particularly in Cloud computing. Were Mr. Lima permitted to join Microsoft as Corporate Vice President, Latin America, and be involved in decisions, strategies, and activities to compete against IBM, he would in my view, inevitably use IBM trade secrets regarding IBM's global business strategies, products in development and other highly confidential and competitively sensitive subjects regarding IBM's proprietary plans and competitive strategies. Knowing how IBM competes to win and maintain large customer accounts across multiple product and service lines would be useful to a competitor like Microsoft.

11. In sum, through his executive roles and participation in the Performance Team, Mr. Lima was involved in many high-level discussions about IBM's business strategy on a global level. He knows the confidential details of, among other things, IBM's products in development; information on top client accounts and strategies for maintaining and growing these accounts; acquisition strategies, including plans to implement and deploy the capabilities of Red Hat; financial information, including

pricing strategies and projected profits and revenues; and competitive strategies for competing with Microsoft.

IBM

12. IBM is a globally integrated business that offers IT products and services to a wide range of business, Public sector, and individual customers.

13. IBM designs, develops, and markets a portfolio of software products and services for customers in all industries, including (1) Hybrid Cloud, which offers businesses and government entities infrastructure, services, and tools for integrated Cloud computing; (2) Cognitive Solutions, which provides Artificial Intelligence-based software and services to clients; (3) Global Technology Services, which provides assistance to companies and government entities in assessing, designing, implementing, and running their computer infrastructure and network systems; (4) Global Business Services, which offers professional management and strategic consulting services as well as systems integration, and application management services, to help clients use and integrate technology into their businesses; (5) Enterprise Server and Storage Systems, which offers clients a wide range of data storage products, data protection services, and IT infrastructure hardware such as computer servers; and (6) IBM Blockchain, which offers clients a suite of Cloud-based services to help clients create and manage blockchain networks.

14. Cloud computing is one of the areas of the most intense competition between technology companies like IBM and Microsoft. It refers to the delivery of on-demand computing resources—everything from applications to data storage—over the internet, generally on a pay-for-use basis. Cloud computing enables

individuals, businesses, and Public sector entities to access, store and use data and software via the internet on computer servers owned and/or managed by third-party “Cloud” service providers—such as IBM, Microsoft, and Amazon—and pay for that service based on usage.

15. Clients procure Cloud computing services in three main sectors: Private Cloud, Public Cloud, and Hybrid Cloud. Private Cloud computing, also referred to as an internal or corporate Cloud, is a Cloud computing environment offered only to select users, usually a single organization, either through secure access over the internet or over a Private internal network.¹ In contrast, Public Cloud computing services are offered to the general Public, either for free, or for a fee, over the internet.² Hybrid Cloud computing allows data and applications to be shared across two or more cloud environments—environments that could include a combination of Private Cloud and Public Clouds.³

16. IBM relies on trade secrets, other confidential information, and proprietary methods and processes in developing, implementing and marketing its products and services offerings, and each year it spends billions of dollars and dedicates extensive research efforts to the development of technological innovations supporting its hardware, software and services businesses. Among other things, IBM utilizes trade secrets, proprietary information and methods, confidential technical know-how,

¹ IBM Cloud Education, *Private Cloud* (April 10, 2010), <https://www.ibm.com/cloud/learn/introduction-to-Private-cloud>.

² IBM Cloud Education, *Public Cloud* (March 3, 2010), <https://www.ibm.com/cloud/learn/Public-cloud>.

³ Red Hat, *Cloud Computing: what is Hybrid cloud?* (last visited June 15, 2020), <https://www.redhat.com/en/topics/cloud-computing/what-is-Hybrid-cloud>.

competitively sensitive customer and distribution information and confidential competitive strategies to design, develop, manufacture and bring to market a variety of products and services relating to technology infrastructure systems.

17. In order to protect its trade secrets, IBM asks a select group of its executives to enter into noncompetition agreements by which they promise that if they leave the Company, they will wait twelve months before joining a competitor in a position where they may use, disclose, or rely on IBM trade secrets and confidential information, or exploit IBM customer goodwill in their possession.

Rodrigo Kede de Freitas Lima

18. Mr. Lima started working at IBM in February 1995. In 2012, he became General Manager, Latin America, where he was responsible for among other things, revenues, profits and losses, overseeing all aspects of customer accounts and business development, managing operations, and developing and implementing business strategy across the region.

19. In 2016, Mr. Lima became the GTS Manager, North America. This was a promotion to a “Band A” executive role—meaning that Mr. Lima was among the top 1% of executives at IBM.⁴ Mr. Lima worked in this role for nearly four years through December 2019. In January 2020, Mr. Lima became General Manager,

⁴ IBM employees with letter Bands (beginning at Band D and rising to Band A and AA) are IBM executives, and IBM employees with number Bands (beginning at Band 1 and rising to Band 10) are non-executives. Band A and AA executives are the highest ranking executives in the Company.

Integrated Accounts, another Band A position, responsible for IBM's largest and most strategic client accounts.

20. In his most recent role as IBM's General Manager, Integrated Accounts, from January 2020 until his resignation in May 2020, Mr. Lima was responsible for operationally running and growing the global portfolio for IBM's 77 top client accounts across all of the Company's business lines. In this position, Mr. Lima directed and oversaw the development and execution of the IBM's strategy for winning new contracts for IBM products and services, securing renewals and expansion of existing contracts, marketing, product development, and delivery and implementation. The products and services that IBM provides for these clients span across all of IBM's business lines, including software, hardware, services, Cloud computing and AI. This work exposed Mr. Lima to IBM confidential information and trade secrets about IBM's top client accounts, including IBM's strategies for maintaining and growing business in those accounts; the strengths, perceived weaknesses, and opportunities for improvement in the service of those accounts; and new sales or renewal opportunities in the accounts.

21. Prior to January 2020, Mr. Lima was IBM's GTS Manager for North America. In that role, he was responsible for, among other things, driving product sales in North America, primarily through IBM's GTS business focused on Cloud computing and other IT infrastructure services, but also with respect to all other business areas of IBM. As a result, Mr. Lima has in-depth knowledge about IBM's products that are in development, such as the one of a kind financial services Public Cloud, as well as marketing and business plans. Mr. Lima has had access to critical components of IBM's technology in development, such as IBM's financial services-ready Public Cloud—a

product launching in a sector of the market that is a primary focus of competition between IBM and Microsoft.

22. Mr. Lima also was exposed to IBM's global strategic business, financial, growth, and investment plans, which IBM is implementing at a regional level in Latin America and elsewhere, through his participation in numerous senior executive discussions and meetings, including:

- (a) Mr. Lima was a member of IBM's Performance Team, consisting of approximately 60 of IBM's senior leaders who run IBM business units across geographies, including the Chairman, CEO, and each Senior Vice President of the Company. Mr. Lima was exposed, as recently as April 2020, to the Performance Team's discussions of IBM's global product development and marketing strategy in Cloud and AI—which is directly applicable to the competition between IBM and Microsoft in Latin America—and confidential details about IBM's competitive plans against Microsoft.
- (b) Mr. Lima was a member of IBM's Acceleration Team, a select group of executives charged with accelerating IBM's growth through leadership initiatives to promote innovation. Mr. Lima was exposed to details about IBM's global Cloud and AI strategy and competitive initiatives discussed at the Acceleration Team's annual meeting in January 2020.
- (c) Mr. Lima developed and reviewed materials for IBM's annual business plans, projections, and strategies that were presented to the Chairman and CEO of the Company, and he participated in a September 2019 meeting of IBM's Board of Directors.

23. Mr. Lima also knows IBM's confidential information regarding recent bids for business in direct competition against Microsoft. As one example, just last year IBM and Microsoft competed for contracts with AT&T that span a number of business sectors. Ultimately, AT&T partnered separately with each of the companies—a practice that is common in the Cloud market. Although some aspects of the division of

labor between IBM and Microsoft concerning AT&T's Cloud business have been settled, Microsoft and IBM remain in active competition for significant aspects of AT&T's Cloud business. Mr. Lima was personally involved in the signing of IBM's contracts with AT&T and ran the team responsible for the contract deliverables.

24. Mr. Lima has been involved in the development and business strategies for a new Cloud product that IBM is launching soon: a financial services-ready Public Cloud. This product, the first of its kind, was designed by IBM specifically for financial institutions with the goal of helping these institutions address their regulatory compliance obligations, as well as their security resiliency requirements,⁵ while moving computing workloads to the Cloud. The product will play an important role in IBM's strategy to compete against Microsoft and others in the Cloud-computing sector. Many confidential and competitively sensitive details about the function, operation, cost and marketing strategies of the offering have not been publicly disclosed. Mr. Lima was involved in regular updates regarding the progress and development of the offering and also had access to strategy and development documents relating to it.

25. Mr. Lima's senior executive positions, and his participation in meetings and discussions where IBM's top leaders worldwide discussed IBM's technology and strategies to win business, has exposed him to confidential information about how IBM intends to integrate and deploy its recent acquisition of the software company Red Hat, Inc. In the largest deal in IBM's history, IBM acquired Red Hat in July 2019, with the strategic aim of increasing IBM's Cloud computing business and to help IBM in its competition for Cloud business against competitors like Microsoft.

26. Red Hat specializes in open-source software—meaning that the basic code is free—that enables customers to manage their data and run their applications both in their own IT environment and on Cloud platforms hosted by outside providers such as IBM. IBM has not disclosed many of the confidential details surrounding its future strategy for Red Hat, including how IBM will continue to develop and market Red Hat capabilities alongside IBM’s offerings portfolio and design, market, and deliver combined Red Hat and IBM capabilities to customers, and how IBM will compete against Microsoft and others. Mr. Lima was exposed to confidential details about IBM’s strategic plans regarding Red Hat in his 2019 GTS role, in his 2020 Integrated Accounts role, and through his participation on the Performance Team up until his resignation from IBM.

27. In addition, over the course of his career at IBM, Mr. Lima developed significant relationships with IBM’s clients, particularly Latin American clients, financial services clients and global clients doing business in Latin America, and he has continued to cultivate those relationships and work closely with those clients in his most recent Integrated Accounts role.

28. Mr. Lima has worked with IBM’s product development teams to expand IBM’s market share for its products and services in Latin America, and he knows confidential information about IBM’s plans to win business from top clients in Latin America, particularly in the Cloud market where IBM and Microsoft routinely engage in head-to-head competition for clients whose contracts are continually up for renewal and future negotiation. Mr. Lima was involved in negotiating and closing major agreements

⁵ Financial institutions face a number of regulations and statutes they must comply with in handling

with clients to provide IBM products and services, including deals for which IBM competed directly against Microsoft. Mr. Lima also served until his resignation as IBM's primary relationship executive for several Latin and North American clients through IBM's "Partnership Executive Program." Mr. Lima knows IBM's strategic and marketing plans, pricing, and confidential details about IBM's relationship with each of these clients, all of which would be highly relevant in his intended role to run and grow Microsoft's business in Latin America.

IBM-Microsoft Competition

29. IBM and Microsoft compete for the same business and government customers. They market computer software and service offerings that compete directly against each other in many areas of IT, particularly in Cloud computing.

30. With only about 20% of the IT workload worldwide having been migrated to the Cloud, 80% of the market remains up for grabs. Further intensifying the battle for Cloud business, the vast majority of organizations do not simply choose one Cloud provider, but instead run multiple Cloud programs. This means that although IBM may have one or more Cloud-computing contracts with a client, they are not guaranteed other Cloud-computing contracts with that same client. This is especially true given the recent rise in popularity of open source software. Moreover, all deals, in the Cloud-computing sector and otherwise, are subject to future renewal and renegotiation—perpetually leaving open the possibility that Microsoft could poach a current IBM contract.

client data. IBM's financial services Public Cloud is designed to address these special requirements.

31. Microsoft is listed in IBM's financial disclosures as a competitor to various IBM business segments. More specifically, Microsoft is listed as a "broad based competitor" to IBM's Global Business Services, among its list of "principal competitors" in the Cloud and cognitive software market, and as a competitor to IBM's Global Technology Services and Systems businesses.⁶ Likewise, IBM is listed in Microsoft's financial disclosures as a competitor in server applications; server operating systems and applications; enterprise-wide computing systems; database, business intelligence, and data warehousing solutions; system management solutions; products for software developers; and Azure, Microsoft's Cloud computing offering.⁷

**Mr. Lima's Proposed Role with Microsoft
As Corporate Vice President, Latin America
Would Be Directly Competitive with His Work at IBM**

32. Mr. Lima informed IBM on May 18, 2020 that he intended to accept an offer to join Microsoft as Corporate Vice President, Latin America.

33. As I understand it, in the Corporate Vice President, Latin America, Mr. Lima will be responsible for setting the direction for the region's product and services portfolio in alignment with global strategy and will be responsible for Microsoft's revenues in Latin America. Mr. Lima will work with Microsoft's industry sector leaders and regional managers to maintain various targets, such as budget and headcounts. He will also act as an ambassador for Microsoft in Latin America, focused on corporate citizenship and building brand equity.

⁶ International Business Machines Corp., Annual Report (Form 10-K) 7-8 (Feb. 25, 2020).

⁷ Microsoft Corp., Annual Report (Form 10-K) 7-9 (Aug. 1, 2019).

34. The IBM confidential information and competitive business secrets Mr. Lima knows, and the IBM customers Mr. Lima knows, by virtue of his responsibilities in each of his recent roles—as IBM General Manager, Latin America; GTS Manager, North America; General Manager, Integrated Accounts; and a member of the Performance Team and Acceleration Team—will all be highly relevant and valuable to Microsoft strategy, planning and decision-making responsibilities.

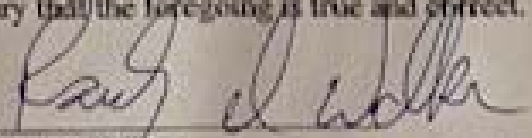
35. Mr. Lima poses a significant competitive threat to IBM because he knows the Company's trade secrets, and because he has developed relationships with significant IBM customers and potential customers at IBM's expense and on the strength of IBM's goodwill, products, and services. Throughout his tenure at IBM, Mr. Lima has had significant exposure to Latin American clients and IBM's confidential Latin America business strategy.

36. In all the respects I have discussed above, the job that I understand Mr. Lima intends to take at Microsoft is in direct competition with the role and responsibilities that he was performing at IBM. Mr. Lima has had significant exposure to IBM's most important clients, product development, and business strategy in the Latin America region, including in the highly competitive Cloud computing market.

37. Now, Mr. Lima intends to move to a strategic Latin America role at one of IBM's top competitors, Microsoft. His proposed role at Microsoft would involve him in the development of competitive strategies, and the cultivation and expansion of client relationships, directly in competition with IBM. Mr. Lima's knowledge of IBM's important clients in Latin America, as well as its confidential

business strategies and plans, would provide a distinct and unfair competitive advantage to Microsoft.

I declare under penalty of perjury that the foregoing is true and correct.


Randy Walker

Executed on June 15, 2020